

(49)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1968/2002
MA 1582/2002

New Delhi, this the 6th day of February, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

1. Faqrudeen S/o Sh. Ashar Ali,
2. Rakesh Kumar S/o Sh. Sita Ram,
3. Rattan Singh,
4. Om Prakash,
5. Immaudeen

All are working as Khallasi,
at Diesal Shed, Northern Railway,
Tugalakabad.

.... Applicants.

(By Advocate Shri Yogesh Sharma)

VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station, New Delhi.

.... Respondents.

(By Advocate Shri Sat Pal Singh)

O R D E R

By Hon'ble Mr. Mukesh Kumar Gupta:-

MA 1582/2002 seeking joining in the present OA, as the cause of action and the nature of relief are common to all the applicants, is allowed, particularly when it has not been opposed.

2. Five applicants in this OA seek direction to respondents to extend them the benefit of judgments dated 18.12.2000 in OA No.1368/1999 and 06.2.2002 in OA No.301/2002 being similarly placed, with all consequential benefits including costs

(S)

3. The facts as stated are that they were initially appointed during the period 1977 to 1979 and subsequently granted temporary status. They were working as Blacksmith, Shuntsman etc., which is a group-C post and accordingly were entitled to regularization in the said group-C posts. Instead of regularizing, the respondents have downgraded them to class-IV posts. Similarly situated officials filed OA No.3074/1991 seeking regularization in group-C post, which was decided on 09.9.1993. In compliance of the aforesaid judgment, the respondents passed an order dated 21.6.1997, relevant excerpts of which read as under:-

"4. In compliance of the directives of the Hon'ble CAT/New Delhi, it has been decided to grant temporary status already achieved by them in Group C post in PQRS Organization, as a provisional measure, especially in view of the fact that the PQRS organization has been closed. Accordingly, they should be utilized against the existing vacancies of Fitters, Grade Rs.950-1500 (RPS). They will be regularized against available vacancies of group C whenever their turn comes in accordance with their seniority after holding the selection/trade test, as the case may be, under rules. Their pay may be allowed to continue which they were drawing before joining Delhi Division. The arrears of difference of pay they would have drawn had they been continued in Grade Rs.950-1500 be paid to them immediately.

5. This is subject to the outcome of the SLP being filed by the Administration simultaneously."

4. Subsequently some similarly situated persons approached this Tribunal vide **OA No.1368/1999 [Daya Ram & Ors. vs. Union of India & Ors.]**, which was disposed of, vide order dated 18.12.2000, which reads as under:

"Heard both sides.

2. It is not denied that applicants are identically situated as those covered by respondents order dated 21.06.97 (Annexure-8). Under the circumstances, this O.A. is disposed of with a direction to respondents to extend the benefits contained in paras 3 & 4 of the aforesaid order dated 21.06.1997 to applicants herein, subject to the outcome of any SLP which respondents may have filed or intend to file.

3. The O.A. stands disposed of as above. No costs."

5. Following the aforesaid judgments, another OA No.301/2002 was filed and also allowed vide order dated 06.2.2002 with a direction to extend the benefit of the aforesaid judgments to the applicants therein. It is the case of the applicants



that they, being similarly situated in all aspects, made representation dated 18.2.2002 seeking extension of benefit of the said judgments, but the same did not yield any result and hence they had no other alternative remedy, except to come before this Tribunal. Reliance was placed on order dated 03.1.1996 in **SLP (C) No.14005 of 1992 [Girdhari Lal vs. Union of India & Ors.]**, wherein it has been observed that Union of India should treat all the similarly situated persons alike and grant them the same benefit instead of driving each of them to litigation. It was also contended that respondents had challenged order dated 06.2.2002 in OA No.301/2002 vide **Writ Petition No.4307 of 2002 [Union of India & Ors. vs. Jamna Prasad & Anr.]** before the Hon'ble Delhi High Court, which upheld the judgment of this Tribunal. In pursuance to the liberty granted by the Hon'ble High Court in Writ Petition, the respondents preferred review application, which too was dismissed by this Tribunal. Vide CM No.4568/2003 the respondents sought review of an order dated 08.1.2003 and also filed CM No.4569/2003 seeking condonation of delay. The aforesaid CMs were dismissed by the Hon'ble High Court of Delhi vide order dated 25.4.2003. Shri Yogesh Sharma, learned counsel appearing on behalf of applicants further stated that to their information, the said judgment has been further upheld by the Hon'ble Supreme Court. But he was unable to produce copy of such order.

6. The respondents on notice issued by this Tribunal, contested the claim laid down stating that the applicants were initially appointed as project casual labourer and granted temporary status in group-C grade as Blacksmith in the PQRS organization with effect from 01.1.1984. The work of PQRS organization was provisional and temporary work charge ex-cadre based on the worth of charge and after completion of the work the applicants were declared surplus and directed to approach concerned Railway Division for posting. Thereafter, the applicants were posted as temporary status gangman in group-D, and were screened along with other persons under group-D posts vide letter dated

[Handwritten signature/initials]



31.12.1996 and were placed on penal for further promotion. The applicants' claim for regularization in group-C post is not tenable. As per the provisions of P.S. No.6661, the applicants were only entitled to get weightage of past service at the time of regularization in group-D post by granting increments of higher-grade post or equivalent grade.

7. We have heard learned counsel for parties at length and perused the pleadings. The applicants reiterated the contentions noticed hereinabove, while Shri Sat Pal Singh, learned counsel appearing on behalf of respondents vehemently contended that in terms of the law laid down by the Hon'ble Supreme Court in ***Writ Petition No.548 of 2000 in Inder Pal Yadav & Ors. vs. Union of India & Ors.*** decided on 13.1.2003, the applicants are not entitled to any relief as provisional local promotion in the projects cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre, or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed at a particular point of time. Reliance was also placed on some other observations of the aforesaid judgment, which are as under:

"It is not in dispute that subsequent that subsequent to the orders of this court, the petitioners were regularized as Khalasis in group D in the open line. However, they have been permitted to continue to serve in various projects of the Railway administration. While they were serving in such projects, they have granted provisional promotion in a particular corresponding scale of pay on the basis of supplementary trade test held in the project itself." (emphasis supplied).

8. Further reliance was placed on order dated 19.8.2004 rejecting the applicants' prayer for regularization in group-C post in OA Nos.2336, 2337 and 2338 of 1999. In the backdrop of the above, it was vehemently contended that the applicants are not entitled to any relief as prayed for.

9. Shri Yogesh Sharma, learned counsel appearing on behalf of applicants, on the other hand, contested the above plea and pointed out that with reference





to observations made in *L. Robert D'souza vs. The Executive Engineer, Southern Railway & Anr. [AIR 1982 SC 854]* that construction department is a permanent department of the Railways and if a person, who is taken on casual basis in group-C post and is working continuously, acquires a right to hold the said post as well as regularization.

10. The question, which falls for consideration is whether the applicants are similarly situated officials to the applicants in OA Nos. 3074/1991, 1368/1999 and 301/2002 or they are placed at par with the applicants in Inder Pal Yadav's case (supra).

11. Shri Yogesh Sharma, learned counsel appearing on behalf of applicants vehemently contended that repeated contention raised by them that they are similarly situated officials to the applicants in afore-noted OAs has no-where been denied by the respondents, either in their reply or during the course of oral hearing and, therefore, they are entitled to the benefit of the judgments rendered by this Tribunal. The learned counsel further pointed out that the facts of the present case are not akin to those of the Inder Pal Yadav's case (supra) and for this purpose our attention was drawn that the basic premise on which the Inder Pal Yadav's case (supra) had proceeded was that the petitioners therein "were regularized as Khallasi in group-D in the open line", which is not the fact in the case in hand.

12. On bestowing our careful consideration to the factual aspects as well as the judgments relied upon by both sides, we find that the contention raised by the applicants that they are similarly situated persons to the applicants who had approached this Tribunal earlier, has no-where been denied. It is not denied by the respondents that in the Inder Pal Yadav's case (supra), the petitioners were "regularized as Khallasi in group-D in the open line", which fact is not inexistence in the present case. Such being the case, we have no hesitation to conclude that



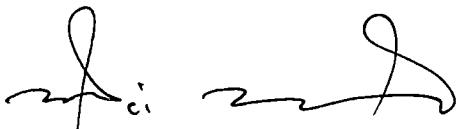


the reliance placed by the respondents on the said judgment is not justified and the said judgment is clearly distinguishable. We have also perused the judgment of the Hon'ble Supreme Court in *L. Robert D'souza vs. The Executive Engineer, Southern Railway & Anr. (supra)*, wherein in para 20, it has been held: "that every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as work-charged. It will be doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development."

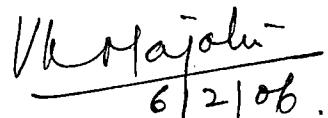
13. In the ultimate analysis of facts and law noted hereinabove, we have no hesitation to conclude that applicants are similarly situated to the applicants in OA Nos. 3074/1991, 1368/1999 and 301/2002 and accordingly they are entitled to the same relief as granted in the initial OA 3074/1991, which in turn has been implemented by the respondents vide communication dated 21.6.1997 and reiterated in subsequent judgments. In our considered view the judgment in Inder Pal Yadav (supra) is not applicable in the facts and circumstances of the present case.

14. Accordingly, following the said judgments, the respondents are directed to extend the benefit to the applicants and they should be regularized against available vacancies of group-C, whenever their turn comes, in accordance with their seniority after holding the selection/trade test, as the case may be, under the rules.

15. OA is allowed. No costs.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra)
Vice-Chairman (A)

/gkk/